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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/829,594	04/22/2004	Ken-Jen Yu	3744-043984	6879

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Webb Ziesenheim Logsdon Orkin & Hanson, P.C.
700 Koppers Building
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Pittsburgh, PA 15219-1818

EXAMINER

HOPKINS, CHRISTINE D

ART UNIT	PAPER NUMBER
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3735

MAIL DATE	DELIVERY MODE
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03/13/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/829,594	Applicant(s) YU, KEN-JEN	
	Examiner CHRISTINE D. HOPKINS	Art Unit 3735	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>29 Jul 04</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-8, 11 and 13-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claim 1 at line 4, claim 7 at lines 1-3, claim 11 at lines 2-4, and claim 13 at line 2-4, the term “design” is indefinite because it does not necessarily constitute a tangible component or limitation.

Claim 14 at line 2 recites the limitation “said plural petal structures.” There is insufficient antecedent basis for this limitation in the claims.

Regarding claims 15-16, it is unclear to the examiner what is meant by the phrase “wherein said plural structures” are identical/different structures. The terms “different” and “identical” are ambiguous because it is unclear as to what the structures are different from, or identical to. Likewise, regarding claim 17, the phrase “wherein some of the plural structures are different structures and others are identical structures” is also unclear for the same reasoning.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Reinbolt et al. (U.S. Patent No. 5,256,123). Reinbolt et al. (hereinafter Reinbolt) disclose an apparatus comprising a hollow longitudinally extending member for placement within the vagina. Regarding claims 1-3, 7-9, 11 and 13, Reinbolt teaches a hollow columnar vaginal member comprising a main body **120**, a minor part **100** and a screw or fastener "jointing design" **140** formed between said main body and said minor part for connection between the two (Figs. 2 and 3). The main and minor parts are also interpreted as the "plural petal structures" in accordance with claim 9 because there is no special technical definition associated with this particular structure in the specification, hence, the broadest reasonable interpretation of the term "petal" is given. Many different shapes and types of petals exist, therefore a possibility of many different interpretations also exist. With respect to claims 4, 6, 10 and 14, the main body and minor part are both porous structures (Fig. 3 and col. 4, lines 38-43). Regarding claim 5, the minor part has an arc-shaped surface (Fig. 2).

With respect to claim 12, the device is considered to be a "one-end opened hollow structure" as depicted in Fig. 3. Regarding claims 15-17, the plural structures are identical structures (Fig. 3), yet are also "different" as evidenced by Fig. 2.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Pub. No. 2002/0055723 to Liu et al. teaches a vaginal opener having a porous structure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTINE D. HOPKINS whose telephone number is (571)272-9058. The examiner can normally be reached on Monday-Friday, 7 a.m.-3:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II can be reached on (571) 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/C. D. H./
Christine D Hopkins
Examiner
Art Unit 3735

/Charles A. Marmor, II/
Supervisory Patent Examiner
Art Unit 3735

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